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JUN - 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 1, 1993

By Hand

Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

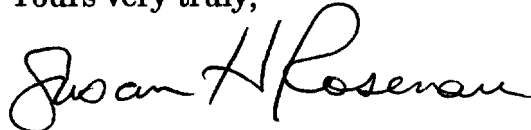
RE: MM Docket No. 93-42 / Calistoga, California

Dear Ms. Searcy:

On behalf of Moonbeam, Inc., an applicant (File No. BPH-911115MG) for a New FM Station on Channel 265A in Calistoga, California, please find the original and six copies of its Motion to Strike in the above-referenced proceeding.

Kindly communicate any questions directly to this office.

Yours very truly,



Susan H. Rosenau

Enclosures (6)

cc: Moonbeam, Inc.
Larry Miller, Esquire
A. Wray Fitch, Esquire
Administrative Law Judge Edward Luton

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Before The

Federal Communications Commission

JUN - 1 1993

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications Of)	Docket No. <u>MM 93-42</u>
)	
MOONBEAM, INC.)	File No. BPH-911115MG
)	
GARY E. WILLSON)	File No. BPH-911115MO
)	
For a Construction Permit for a)	
New FM Station on Channel)	
265A in Calistoga, California)	

To: The Honorable Edward Luton
Administrative Law Judge

Motion to Strike

Pursuant to Sections 1.45 and 1.229 of the Commission's Rules, Moonbeam, Inc. ("Moonbeam"), by its attorneys, respectfully submits this Motion to Strike Exhibit 1 of the Reply to Opposition to Petition to Enlarge Issue filed by Gary Willson ("Willson") on May 20, 1993, stating in support thereof as follows:

1. In his April 21, 1993 Petition to Enlarge, Willson sought to add misrepresentation and lack of candor issues against Moonbeam, Inc. on the basis of hearsay evidence. Among the issues raised was whether Ms. Constant was an associate Realtor with the Calistoga office of James Warren & Sons. One item of evidence Willson sought to introduce was the hearsay declaration of an individual named Gary Horner, who claimed to have spoken to some unidentified person at the California Department of Real Estate, who allegedly told him that Mary Constant's realty license "was not currently held in any office in the state." Petition to Enlarge, filed April 21, 1993, Exhibit 4, Declaration of Gary Horner.

2. Moonbeam opposed the petition on May 4, 1993, supported by the declarations of persons with personal knowledge of the relevant facts, including the manager of the real estate office in question.

3. Willson now seeks on reply to submit additional hearsay evidence which was equally available to him when his petition was first filed. He submits a printout from the California Department of Real Estate which lists employees of James Warren & Sons (Reply to Opposition to Petition to Enlarge Issue, filed May 20, 1993, Exhibit 1).

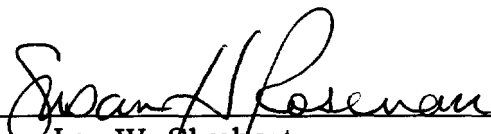
4. This is new matter in violation of Section 1.45 of the Commission's Rules, and is non-probative. The California Department of Real Estate's information regarding where realtors are employed and where realtors' licenses are held (which are related yet different questions) is, by its nature, second hand. An error in reporting, clerical error or omission, or post office error could easily result in the agency's information being incorrect. The same mishap which apparently caused Mr. Horner to receive erroneous information from the Department of Real Estate is probably just repeated here. Accordingly, the matter should be stricken.

CONCLUSION

For the foregoing reasons, Moonbeam, Inc. respectfully requests that Exhibit 1 to Willson's Reply to Opposition to Petition to Enlarge Issue, filed May 20, 1993, be stricken.

Respectfully submitted,

MOONBEAM, INC.

By 
Lee W. Shubert
Susan H. Rosenau

Its Attorneys

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Arlington, VA 22203-1633

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June 1, 1993

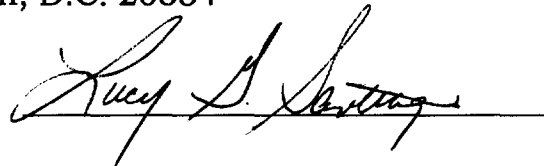
CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing Motion to Strike was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

A. Wray Fitch, III, Esquire
Gammon & Grange
8280 Greensboro Drive
McLean, VA 22102-3807

Administrative Law Judge Edward Luton
2000 L Street N.W.
Washington, D.C. 20036

Larry Miller, Esquire*
Federal Communications Commission
Mass Media Bureau, Hearing Branch
Suite 7212
2025 M Street N.W.
Washington, D.C. 20554

A handwritten signature in cursive script, appearing to read "Lucy D. Sargent", is written over a horizontal line.

June 1, 1993